IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.02.2007

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.Nos.11770 & 13217 of 2000

C.Saleth Mary ... Petitioner in W.P.No.11770 of 2000

A.S.Kuppusamy ... Petitioner in W.P.No.13217 of 2000

Vs.

1. The State of Tamil Nadu
   Rep.by its Secretary to Government
   School Education Department,
   Fort St. George, Chennai 600 009.

2. The Director,
   Teacher Education Research &
   Training, Chennai 600 006.

3. The District Educational Officer,
   Erode, Erode District.

4. The District Elementary Educational Officer,
   Villupuram, Villupuram Dsitrict.

5. S.S.V.Higher Secondary School
   Rep.by Secretary.
   Kodumudi,
   Erode District.

... Respondents in both W.Ps.

6. The Manager,
   T.Ariyalur,
   St.Marys Church,
   Beach Road,
   Cuddalore 607 001.

... 6th Respondent in W.P.No.11770/2000

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PRAYER IN W.P.No.11770 of 2000: This writ petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus, calling for the records pertaining to the order passed by the 1st respondent in G.O.Ms.No.1236 Education Department, dated 17.09.1984 and quash the same in so far as imposition of 50% mark in Plus 2 Examination and direct the respondents to evaluate the certificates of the petitioner and direct approve the appointment of the petitioner consequently and confer all the consequential benefits.

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PRAYER IN W.P.No.13217 of 2000: This writ petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus, calling for the records pertaining to the order passed by the 1st respondent in G.O.Ms.No.1236 Education Department dated 17.09.1984 and the proceedings of the 2nd respondent in Ou.Mu.No.17002/C3/1999 dated 30.06.2000 and quash the same in so far as imposition of 50% marks in Plus 2 Examination and teachers training course and direct the respondents to evaluate the certificates of the petitioner and direct to approve the appointment of the petitioner consequently and confer all the consequential benefits.

For Petitioners : Mr.G.Jeremiah
For Respondents : Mr.M.Sekar, Spl.G.P.

O R D E R

The writ petitions are filed by the petitioners challenging the G.O. passed by the first respondent in G.O.Ms.No.1236 Education dated 17.09.1984, in so far, it imposes 50% marks in Plus 2 examination and also to direct the respondents to evaluate the certificates of the petitioners. The petitioners were appointed as Secondary Grade Teachers in the 4th respondent schools on 15.11.1999 and 20.10.1999 respectively in the permanent vacancy. When the service registers of the petitioners were forwarded to the respondents for approval of their appointments, the same was not considered on the sole ground that the petitioners have not obtained 50% marks in Plus 2 examination and therefore, the Teacher Training Certificate issued by the Government of Karnataka cannot be evaluated.

2. According to the petitioners, they have passed the Plus 2 examination, admittedly, obtaining marks less than 50%. Thereafter, they underwent Teacher Training Course conducted by Karnataka State and passed in first class. Their appointments in the fourth respondent was not only to the sanctioned strength but also after their names were forwarded and sponsored by the Employment Exchange as per law. Since the petitioners have secured less than 50% of marks in Plus 2 examination, the Teacher Training certificates obtained by them in Karnataka State are not evaluated by the second respondent on basis of G.O.Ms.1236 Education dated 17.09.1984. The said G.O., which contemplates the securing of 50% of marks in S.S.L.C. to evaluate the Karnataka State's Teacher Training certificate, is question on various grounds including that the same is arbitrary and passed without jurisdiction.

3. According to the petitioners, the Government of Tamil Nadu is not appointing Secondary Grade Teachers even now on basis of marks but only on basis of reference by the Employment Exchange based on seniority. In view of the same, insisting of 50% of marks in the S.S.L.C. is only in respect of candidates, who have undergone Teacher Training certificate in

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Karnataka State is arbitrary and it is an empty formality. It is also the case of the petitioners that when the Government of India has permitted the Karnataka Teacher Training course, imposing of 50% in the S.S.L.C. marks for evaluation is uncalled for. According to the petitioners, the Teacher Training course in Karnataka State is conducted with 2 years duration and the method of examination is very strict and tough when compared to the examination to be conducted in Tamil Nadu State where an external assessment has been given, with the result students are unable to get more marks.

4. In view of the same, insisting of 50% mark even in the Teacher Training course is unlawful and without jurisdiction. The petitioners also would submit that the refusal of evaluating the papers of the petitioners on this ground is violative of Article 14 of the Constitution of India. The petitioners also would state that this Court in the judgement dated 23.12.1998 passed in W.P.No.7759, 11097, 1600 & 13416 of 1997 relying upon the Division Bench judgement in W.A.No.966 of 1992 and 1019 of 1992 allowed the writ petitions therein and directed the authority to evaluate the Teacher Training certificate issued by the Karnataka Secondary Grade Education Board on par with teachers of the Tamil Nadu and regularize their services and the petitioners on the basis of the same are also entitled. The petitioners are working under the fourth respondent school, ever since the date of their appointment as stated above.

5. The second respondent the Director of School Education Research and Training has filed the counter affidavit in these cases.

6. According to the second respondent, the decision of the Government to have more marks, was based on the fact that in other states, the minimum marks prescribed in their Teacher Training course examination is lower than the marks prescribed by the Tamil Nadu Board examination. In Karnataka the prescribed minimum pass mark is only 40%, which is below the minimum pass mark of 50%, prescribed in Tamil Nadu. It is also admitted by the second respondent that the said stipulation has been quashed by this Court, but it is the case of the second respondent that the quashing of the said stipulation was only in respect of those petitioners alone, with liberty to the authorities to cancel or set aside the evaluation after due notice to the persons concerned and after hearing their objection and it was in those circumstances, the Government has issued the impugned Government Order. According to the impugned Government Order, the evaluation of the said certificate was governed by many rules including that the candidates, who have obtained Karnataka certificate should have obtained 50% marks in aggregate in their S.S.L.C. In the case of Teacher Training certificate holders in Tamil Nadu, the requirement of Plus 2 for admission in Diploma in Teacher Training education was made compulsory by G.O.Ms.No.906 Education Department dated 16.06.1987 with effect from 1987 - 1988. As per the Government order, it is the case of the second respondent that the persons like petitioners, who have obtained Teacher Training Certificate from outside the state of

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Tamil Nadu, they should have obtained minimum 50% marks in aggregate in the Plus 2 examinations taken up by them, apart from minimum 50% marks in each subjects, in every year in the Teacher Training course as that of Tamil Nadu.

7. According to the second respondent, the petitioner in W.P.No.11770 of 2000 has not obtained 50% marks in Karnataka Teacher Training course in the first year in 2 subjects and the petitioner in W.P.No.13217 of 2000 has not obtained 45% marks in Plus 2 aggregate and has not obtained 50% of mark in Karnataka Teacher Training certificate in one subject. It is also admitted that in respect of various other candidates, when they have filed W.P.No.7759 of 1997, this Court passed an order on 23.12.1998 directing that those petitioners also should be treated equivalent to that of other candidates like Vetriazhagan and Selvi.Hazeema in whose favour, the Government has passed G.O.Ms.No.1196 Education (D-1) Department dated 03.12.1992 and G.O.(2-D).No.284 dated 15.12.1995 as special case holding that such benefits should be given to the petitioners therein. It is also the case of the second respondent that pending the above said Writ petitions the Government has cancelled the benefit given to the said Selvi.L.Hazeema, who was given relaxation of requirement of 50% marks and she has subsequently obtained the necessary marks in writing two improvement examinations in Karnataka State Teacher Training certificate and got her certificate evaluated as per the norms prescribed in G.O.Ms.No.1236 dated 17.09.1984. Therefore, according to the second respondent, the petitioners are not entitled for the benefits of the Government Order passed in the case of the said Selvi.L.Hazeema.

8. It is also the case of the second respondent that any such benefits of relaxation can be applicable only in respect of those candidates, who have undergone diploma in Teacher Training course upto 1984 and 1985. According to the second respondent, when as against the order of the learned Single judge in W.P.No.7759 of 1997, the Government has filed W.A.No.930 of 1998 etc. and pending the appeal many of the petitioners have fulfilled the eligibility criteria as per the Government Order and their marks were evaluated. It is also the case of the second respondent that based on the representation of the candidates, who have not passed 50% in Plus 2 examination and as well as 50% in Teacher Training Course in Tamil Nadu, Government passed G.O.Ms.No.(1-D)No.26 School Education Department dated 21.02.2003 deciding to conduct special test and if they qualify the same, the certificates were evaluated. Therefore, according to the second respondent the norms prescribed by the impugned Government Order are perfectly in order.

9. Mr.G.Jeremiah, learned counsel appearing for the petitioners would submit that the validity of the said G.O.Ms.No.1236 Education Department dated 17.09.1984 came to be decided along with various other issues in W.P.No.7759 of 1997 etc. batch and by referring to various Government Orders, by which, in respect of certain individuals, exemptions have been given from the said requirements and therefore, holding that

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there is no special reason to treat those individuals separately and directed the Government to evaluate the Teacher Training certificate of the petitioners issued by the Karnataka Secondary Education Board on par with the teachers of Tamil Nadu and regularize their services. It is as against the said order of the learned Single Judge, the Government has filed Writ Appeal in W.A.No.930 of 1998 etc. batch and the Division Bench by an order dated 19.10.2005, dismissed the same and therefore, it is not open to the respondents now to raise the same objection in respect of the petitioners.

10. On the other hand, Mr.M.Sekar, learned Special Government Pleader would submit that by virtue of the subsequent Government Order by giving opportunity to the persons like petitioners, they are permitted to undergo certain examination and therefore, it is not open to the petitioners to challenge the said portion of the Government Order at this point of time. He would also referring to G.O.Ms.(1-D) No.26 dated 21.02.2003.

11. I have heard the learned counsel for the petitioner and also the learned Special Government Pleader for respondents and perused the entire records.

12. It is seen that the purport and content of the impugned G.O.Ms.No.1236 Education Department dated 17.09.1984, was tested by the learned Single Judge elaborately in the order dated 23.12.1998 in the batch of Writ petitions in W.P.No.7759 of 1997 etc. batch the Hon'ble Justice P.D.Dinakaran, while rejecting the contentions raised on behalf of the respondents, has categorically found that by passing individual Government Orders, relaxation have been given in respect of certain individuals and finding that there is no special reason for such relaxation, has held that the same benefits should be given to the petitioners in the said Writ petitions also. The learned Judge on facts found as follow:

> "28. It is not in dispute that the petitioners in W.P.Nos.7759, 11097 and 13416 of 1997 as well as Mr.Vetriazhagan and Selvi Hazeema have passed the respective Teachers Certificate Higher Course Examination conducted by the Karnataka Secondary Education Examination Board, subsequent in G.O.Ms.No.1236 Education Department dated 17.09.1984 came into force.
>
> 29. I do not find any special reason to treat the case of Mr.Vetrizhagan and Selvi, Hazeema from that of the petitioners herein as all of them had admittedly written the teachers' certificate Higher Course examination conducted by the Karnataka Secondary Grade Education Examination Board only after passing of G.O.Ms.No.1236 Education Department dated 17.09.1984."

and ultimately held that finding such a discrimination has been shown as follows:

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"34. for all the reasons stated above, the impugned orders in the above writ petitions are quashed with a direction to the Government to evaluate the teachers certificate of the petitioners issued by the Karnataka Secondary Education Examination Board, on par with that of the teachers in Tamil Nadu and to regularise their services and settle all their attendant benefits including the arrears of salary, within eight weeks from the date of receipt of this order."

13. It is relevant to point out at this stage as rightly pointed out by the learned counsel for the petitioner Mr.G.Jeremiah that not satisfied with the said categoric pronouncement, the respondents have filed Writ Appeal in W.A.No.930 of 1998 batch and the Division Bench by consisting of Hon'ble Justice M.Karpagavinayagam (as he then was) and Hon'ble Justice S.R.Singaravelu have totally aggrieved with the decision of the learned Single judge holding that there are no special circumstance for giving exemption in respect of two candidates. It is also relevant to point out that when the plea on behalf of the respondents that subsequently, in respect of one candidates, the exemption given was withdrawn was brought to the notice of this Court, the Division Bench took serious note of the same and held as follows:

"8. We are afraid, such an argument cannot be advanced by the State, since the stand of the Government before the learned single Judge was, that those candidates, namely, Vetriazhagan and Selvi Nazeema were given the benefits, by passing appropriate G.Os., only as special cases and under exceptional circumstances."

and ultimately while dismissing the Writ Appeal held as follows:

"10. We are not happy over the attitude of the state Government, in taking a contrary stand. It is strange to note that the Government Pleader has not shown any special and exceptional circumstances; on the basis of which, those G.Os. have been withdrawn. Hence, we do not find any merit in these appeals."

14. In view of the above categoric pronouncement of the issues by the learned Single Judge, as confirmed by the Hon'ble Division Bench, there is absolutely nothing more to be decided except to allow the Writ petitions with a direction to the respondents to evaluate the certificates obtained from Karnataka Teacher Training Board and thereafter, regularize the services of the petitioners from the date of their respective appointments. That apart, I am constrained to state that there is absolutely no rational nexus of fixing 50% marks in S.S.L.C. examination or in Plus 2 examination, when such persons like that of the petitioners were permitted to undergo the Teacher Training course conducted by the Karnataka Government. It certainly affects the legitimate expectation, apart from the fact that by the conduct of the respondents, discrimination

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has been shown by choosing individuals as a special circumstance.

15. In view of the above said facts, the Writ petitions stand allowed. No Costs. Consequently, the connected M.Ps. are closed.

nbj

Sd/-
Assistant Registrar,

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Sub Assistant Registrar.

To

1. The Secretary to Government
The State of Tamilnadu,
School Education Department,
Fort St. George, Chennai 600 009.

2. The Director,
Teacher Education Research &
Training, Chennai 600 006.

3. The District Educational Officer,
Erode, Erode District.

4. The District Elementary Educational Officer,
Villupuram, Villupuram Dsitrict.

+ One cc to Mr. G. Jermiah Advocate SR 10276

MS (co)
sg 27/2/07

order in
W.P.Nos.11770 & 13217 of 2000

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